

NOTICE TO LICENSEES
Re: Foreclosure Consultants

The following notice is applicable to all Escrow Agency licensees under NRS 645A, Mortgage Broker licensees under NRS 645B and Mortgage Banker licensees under NRS 645E.

Assembly Bill 440 of the 2007 Legislative Session added extensive provisions to the law pertaining to “foreclosure consultants”, “foreclosure purchasers” and “foreclosure reconveyances”, among other things, effective October 1, 2007. These terms will not be defined here. Instead, the new provisions of the law will follow this notice.

No new license by the Mortgage Lending Division (“Division”) will be required for a person to be in the business of a foreclosure consultant or foreclosure purchaser. No new regulations are authorized by the new law. However, the Commissioner may assess an administrative penalty of up to \$10,000 per violation of the law, and criminal penalties and fines also exist for violations of certain provisions of the law.

The Division is aware of numerous persons advertising the ability for anyone to become a foreclosure consultant and earn up to \$1,000 per hour in helping borrowers avoid foreclosure. These claims may or may not be true. And while licensees can become foreclosure consultants or foreclosure purchasers without any new Division license or approval, please note that an existing escrow agency, mortgage broker or mortgage banker license may be impacted by *any* conduct that constitutes fraud or misrepresentation, constitutes a lack of moral turpitude or which is otherwise unsafe or injurious.

The Division recommends caution to those licensees who wish to act as foreclosure consultants and/or foreclosure purchasers. Complaints received by the Division against licensees acting in those capacities will be investigated and will also be referred to appropriate law enforcement agencies as applicable.

Set forth below are the provisions pertaining to foreclosure consultants and foreclosure purchasers. The Division requests that all licensees read them carefully.

Sec. 6. Chapter 645F of NRS is hereby amended by adding thereto the provisions set forth as sections 7 to 20, inclusive, of this act.

Sec. 7. *As used in sections 7 to 20, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 8 to 14, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 8. *“Covered service” includes, without limitation:*
1. Financial counseling, including, without limitation, debt counseling and budget counseling.

- 2. Receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a mortgage or other lien on a residence in foreclosure.*
- 3. Contacting a creditor on behalf of a homeowner.*
- 4. Arranging or attempting to arrange for an extension of the period within which a homeowner may cure his default and reinstate his obligation pursuant to a note, mortgage or deed of trust.*
- 5. Arranging or attempting to arrange for any delay or postponement of the time of a foreclosure sale.*
- 6. Advising the filing of any document or assisting in any manner in the preparation of any document for filing with a bankruptcy court.*
- 7. Giving any advice, explanation or instruction to a homeowner which in any manner relates to the cure of a default in or the reinstatement of an obligation secured by a mortgage or other lien on the residence in foreclosure, the full satisfaction of the obligation, or the postponement or avoidance of a foreclosure sale.*

Sec. 9. *“Foreclosure consultant” means a person who, directly or indirectly, makes any solicitation, representation or offer to a homeowner to perform for compensation, or who, for compensation, performs any covered service that the person represents will do any of the following:*

- 1. Prevent or postpone a foreclosure sale;*
- 2. Obtain any forbearance from any mortgagee or beneficiary of a deed of trust;*
- 3. Assist the homeowner to exercise the right of reinstatement provided in the legal documents;*
- 4. Obtain any extension of the period within which the homeowner may reinstate the homeowner’s obligation;*
- 5. Obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a residence in foreclosure or included in the mortgage or deed of trust;*
- 6. Assist the homeowner in foreclosure or loan default to obtain a loan or advance of money;*
- 7. Avoid or ameliorate the impairment of the homeowner’s credit resulting from the recording of a notice of default or the conduct of a foreclosure sale;*
- 8. Save the homeowner’s residence from foreclosure; or*
- 9. Assist the homeowner to obtain a foreclosure reconveyance.*

Sec. 10. *“Foreclosure purchaser” means a person who, in the course of his business, vocation or occupation, acquires or attempts to acquire title to a residence in foreclosure from a homeowner.*

Sec. 11. 1. *“Foreclosure reconveyance” means a transaction that involves:*

- (a) The transfer of title to a residence in foreclosure by a homeowner during a foreclosure proceeding by:*

(1) The transfer of an interest in the residence in foreclosure from the homeowner; or
(2) The creation of a mortgage or other lien during the foreclosure process that allows the acquirer to obtain title to the residence in foreclosure by redeeming the property as a junior lien holder; and
(b) The subsequent conveyance, or promise of a subsequent conveyance, of an interest in the residence to the former homeowner by the acquirer, or a person acting in concert with the acquirer, that allows the former homeowner to remain in possession of the residence following the completion of the foreclosure proceeding.

2. As used in this section, "interest in the residence" includes, without limitation, an interest in a contract for a deed, a purchase agreement, and an option to purchase or lease.

Sec. 12. *"Foreclosure sale" means the sale of real property to enforce an obligation secured by a mortgage or lien on the property, including the exercise of a trustee's power of sale pursuant to NRS 107.080.*

Sec. 13. *"Homeowner" means the record owner of a residence in foreclosure at the time the notice of the pendency of an action for foreclosure is recorded pursuant to NRS 14.010 or the notice of default and election to sell is recorded pursuant to NRS 107.080.*

Sec. 14. *"Residence in foreclosure" means residential real property consisting of not more than four family dwelling units, one of which the homeowner occupies as his principal place of residence, and against which there is an outstanding notice of the pendency of an action for foreclosure recorded pursuant to NRS 14.010 or notice of default and election to sell recorded pursuant to NRS 107.080.*

Sec. 15. *The provisions of sections 7 to 20, inclusive, of this act do not apply to, and the terms "foreclosure consultant" and "foreclosure purchaser" do not include:*

- 1. An attorney at law rendering services in the performance of his duties as an attorney at law;*
- 2. A person, firm, company or corporation licensed to engage in the business of debt adjustment pursuant to chapter 676 of NRS while engaging in that business;*
- 3. A person licensed as a real estate broker, broker-salesman or salesman pursuant to chapter 645 of NRS while acting under the authority of that license;*
- 4. A person or the authorized agent of a person acting under the provisions of a program sponsored by the Federal Government, this State or a local government, including, without limitation, the Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association or the Federal Home Loan Bank;*
- 5. A person who holds or is owed an obligation secured by a mortgage or other lien on a residence in foreclosure if the person performs services in connection with this obligation or lien and*

the obligation or lien did not arise as the result of or as part of a proposed foreclosure reconveyance;

6. Any person doing business under the laws of this State or of the United States relating to banks, trust companies, savings and loan associations, industrial loan and thrift companies, regulated lenders, credit unions, insurance companies, or a mortgagee which is a United States Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of those persons, and any agent or employee of those persons while engaged in the business of those persons;

7. A person licensed as an escrow agent, title agent, mortgage agent, mortgage broker or mortgage banker pursuant to chapter 645A, 692A, 645B or 645E of NRS, while acting under the authority of his license;

8. A nonprofit agency or organization that offers credit counseling or advice to a homeowner of a residence in foreclosure or a person in default on a loan; or

9. A judgment creditor of the homeowner whose claim accrued before the recording of the notice of the pendency of an action for foreclosure against the homeowner pursuant to NRS 14.010 or the recording of the notice of default and election to sell pursuant to NRS 107.080.

Sec. 16. *A foreclosure consultant shall not:*

1. Claim, demand, charge, collect or receive any compensation until after the foreclosure consultant has fully performed each covered service that he contracted to perform or represented he would perform.

2. Claim, demand, charge, collect or receive any fee, interest or other compensation for any reason which is not fully disclosed to the homeowner.

3. Take any wage assignment, lien on real or personal property, assignment of a homeowner's equity or other interest in a residence in foreclosure or other security for the payment of compensation. Any such security is void and unenforceable.

4. Receive any consideration from any third party in connection with a covered service provided to a homeowner unless the consideration is first fully disclosed to the homeowner.

5. Acquire, directly or indirectly, any interest in the residence in foreclosure of a homeowner with whom the foreclosure consultant has contracted to perform a covered service.

6. Accept a power of attorney from a homeowner for any purpose, other than to inspect documents as provided by law.

Sec. 17. 1. *In addition to any other remedy or penalty, the Commissioner may, after giving notice and opportunity to be heard, impose an administrative penalty of not more than \$10,000 on a foreclosure consultant who violates any provision of section 16 of this act.*

2. Except as otherwise provided in this section, all money collected from administrative penalties imposed pursuant to this section must be deposited in the State General Fund.

3. The money collected from an administrative penalty may

be deposited with the State Treasurer for credit to the Fund for Mortgage Lending created by NRS 645F.270 if:

- (a) The person pays the administrative penalty without exercising his right to a hearing to contest the penalty; or*
- (b) The administrative penalty is imposed in a hearing conducted by a hearing officer or panel appointed by the Commissioner.*

4. The Commissioner may appoint one or more hearing officers or panels and may delegate to those hearing officers or panels the power of the Commissioner to conduct hearings, determine violations and impose the penalties authorized by this section.

5. If money collected from an administrative penalty is deposited in the State General Fund, the Commissioner may present a claim to the State Board of Examiners for recommendation to the Interim Finance Committee if money is needed to pay attorney's fees or the costs of an investigation, or both.

Sec. 18. 1. *A homeowner who is injured as a result of a foreclosure consultant's violation of a provision of section 16 of this act may bring an action against the foreclosure consultant to recover damages caused by the violation, together with reasonable attorney's fees and costs.*

2. If the homeowner prevails in the action, the court may award such punitive damages as may be determined by a jury, or by a court sitting without a jury, but in no case may the punitive damages be less than 1 1/2 times the amount awarded to the homeowner as actual damages.

Sec. 19. *A foreclosure purchaser who engages in any conduct that operates as a fraud or deceit upon a homeowner in connection with a transaction that is subject to the provisions of sections 7 to 20, inclusive, of this act, including, without limitation, a foreclosure reconveyance, is guilty of a gross misdemeanor and shall be punished by imprisonment in the county jail for not more than 1 year, or by a fine of not more than \$50,000, or by both fine and imprisonment.*

Sec. 19.5. 1. *In addition to the penalty provided in section 19 of this act and except as otherwise provided in subsection 5, if a foreclosure purchaser engages in any conduct that operates as a fraud or deceit upon a homeowner in connection with a transaction that is subject to the provisions of sections 7 to 20, inclusive, of this act, including, without limitation, a foreclosure reconveyance, the transaction in which the foreclosure purchaser acquired title to the residence in foreclosure may be rescinded by the homeowner within 2 years after the date of the recording of the conveyance.*

2. To rescind a transaction pursuant to subsection 1, the homeowner must give written notice to the foreclosure purchaser and a successor in interest to the foreclosure purchaser, if the successor in interest is not a bona fide purchaser, and record that notice with the recorder of the county in which the property is

located. The notice of rescission must contain:

- (a) The name of the homeowner, the foreclosure purchaser and any successor in interest who holds title to the property; and*
- (b) A description of the property.*

3. Within 20 days after receiving notice pursuant to subsection 2:

- (a) The foreclosure purchaser and the successor in interest, if the successor in interest is not a bona fide purchaser, shall reconvey to the homeowner title to the property free and clear of encumbrances which were created subsequent to the rescinded transaction and which are due to the actions of the foreclosure purchaser; and*
- (b) The homeowner shall return to the foreclosure purchaser any consideration received from the foreclosure purchaser in exchange for the property.*

4. If the foreclosure purchaser has not reconveyed to the homeowner title to the property within the period described in subsection 3, the homeowner may bring an action to enforce the rescission in the district court of the county in which the property is located.

5. A transaction may not be rescinded pursuant to this section if the foreclosure purchaser has transferred the property to a bona fide purchaser.

6. As used in this section, "bona fide purchaser" means any person who purchases an interest in a residence in foreclosure from a foreclosure purchaser in good faith and for valuable consideration and who does not know or have reasonable cause to believe that the foreclosure purchaser engaged in conduct which violates subsection 1.

Sec. 20. *The rights, remedies and penalties provided pursuant to the provisions of sections 7 to 20, inclusive, of this act are cumulative and do not abrogate and are in addition to any other rights, remedies and penalties that may exist at law or in equity, including, without limitation, any criminal penalty that may be imposed pursuant to section 19 of this act.*